HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition Nos.20637, 24414 and 24567 of 2006

Writ Petition No.20637 of 2006

Between:

B. Gopal and two others.

.... Petitioners

AND

The Union of India,
represented by its Secretary to Government,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances &
Pension, New Delhi and three others.

... Respondents.

Counsel for the petitioners: Sri V. Jagapathi

Counsel for the respondents: Sri Bathula Raj Kiran,
Standing Counsel for Central
Government.

Writ Petition No.24414 of 2006

Between:

J. Venugopal

.... Petitioner

AND

The Union of India,
represented by its Secretary to Government,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances &
Pension, New Delhi and three others.

... Respondents.

Counsel for the petitioner: Sri C. Sivasankar for
Sri C.M.R. Velu.

Counsel for the respondents: Sri Penjuri Venugopal,
Standing Counsel for Central
Government.

Writ Petition No.24567 of 2006

Between:

G. Satya Prasad

.... Petitioner

AND

The Union of India,
represented by its Secretary to Government,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances &
Pension, New Delhi and three others.

... Respondents.

Counsel for the petitioners: None.

Counsel for the respondents: Ms.T. Bala Jayasree,
Standing Counsel for Central
Government.

:: O R D E R ::

27th February 2007

Per G.S.SINGHVI, C.J.

These petitions are directed against order dated 11-9-2006 vide which Central Administrative Tribunal, Hyderabad Bench (for short, 'the Tribunal') rejected the prayer of the petitioners for quashing the employment notice issued

by the Accountant General (A & E), Andhra Pradesh (respondent No.3 herein) for recruitment of Group 'D' employees and for grant of a declaration that they are entitled to be absorbed on Group 'D' posts.

The petitioners were engaged as casual labourers in the office of respondent No.3 for different dates. The details of the periods during which the petitioners and others, who joined them as applicants in O.A.No.1117 of 2004, worked in the office of respondent No.3 from 1998-99 to 2003-04 are as under:

Appl. No.	Date of Birth	Date of Entry	No. of Days worked in the years					
			1998-1999	1999-2000	2000-2001	2001–2002	2002–2003	2003-2004
1	10-5-75	12-4-93	193	109	141	182	160	174
2	21-11-72	6-4-94	195	137	143	178	179	180
3	10-6-77	17-4-95	194	159	143	162	90	130
4	10-5-72	17-4-95	108	161	149	167	174	180
5	6-8-74	17-4-95	114	167	143	146	99	165
6	23-8-76	13-2-96	187	161	142	177	143	144
7	10-5-76	26-6-97	173	174	159	172	178	180
8	24-5-76	18-11-98	38	102	132	137	169	156

In response to the advertisement issued by respondent No.3 in July, 2000, the petitioners applied for recruitment to Group 'D' posts. They were called for interview, but in the wake of restriction imposed by the Government of India on filling up of vacant posts, the process of recruitment was abandoned. After a gap of four years, respondent No.3 issued fresh advertisement, which was published in Employment News dated 17 – 23 July, 2004 for filling up Group 'D' posts. The petitioners submitted their applications, but this time their candidature was rejected on the ground that they had become over-age.

The petitioners challenged the rejection of their candidature by filing an application under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act'), which was registered as O.A.No.1117 of 2004. They prayed for quashing the employment notice and also for issue of a direction to the respondents to absorb them on Group 'D' posts in accordance with the Casual Labourers (Grant of Temporary Status & Regularisation) Scheme, 1993 (for short, 'the Scheme'). By an interim order dated 15-10-2004, the Tribunal directed the respondents to issue call letters to the petitioners so as to enable them to appear in the interview. This was subject to the condition that the result of the applicants shall not be declared till the next date. After sometime, the petitioners filed M.A.No.669 of 2004, which was disposed of by the Tribunal vide order dated 27-10-2004, the operative portion of which reads as under:

> "We therefore find it necessary to modify the interim order clarifying that if the respondents still decide not to send call letters to the applicants

to appear for the interview scheduled to be held till 29-10-2004, they shall keep 8 posts of Group 'D' vacant. Interim order stands modified accordingly. List the matter on 5-11-2004."

In compliance of the Tribunal's order, respondent No.3 interviewed the petitioners on 29-10-2004, but the result of their selection was not announced. After about one year and one month, the Tribunal passed order dated 3-1-2006, the relevant extract of which is reproduced below:

"It would therefore be necessary that the results of the first round be tabulated, so that we know where the applicants stand in the said list as also what is the policy the respondents are going to follow for calling the candidates from amongst them in the next round of interview, since it is stated by the counsel for the respondents that there shall be a second round of interview in respect of candidates who qualify in the first round. The tabulation and policy decision regarding cut off marks for calling the candidates for second round of interview be placed before us in sealed cover on the next date of hearing. S.O. to four weeks i.e. 31-1-2006."

In compliance of the aforementioned order, respondent No.3 again interviewed the petitioners sometime in May 2006, but result of the interview was not declared.

After hearing the advocates for the parties, the Tribunal dismissed the O.A. by observing that the provisions contained in the Scheme are not applicable to the petitioners and they were not entitled to the benefit of age relaxation.

Shri V. Jagapathi, learned counsel for the petitioners in Writ Petition No.20637 of 2006 and Shri C. Sivasankar, learned counsel for the petitioner in Writ Petition No.24414 of 2006 argued that by having worked as casual labourers for more than one decade, the petitioners have acquired the right to be regularly appointed against the advertised posts and the Tribunal committed a serious error by refusing to direct the respondents to appoint them on regular basis by relaxing the age. Learned counsel further argued that the decision of respondent No.3 not to entertain the candidature of the petitioners on the ground that they have crossed the upper age limit is liable to be nullified because, in the context of advertisement issued in July, 2000, they were not only treated eligible, but were called for interview for appointment on Group 'D' posts. An alternative argument advanced by Shri V. Jagapathi is that even if the Court comes to the conclusion that the petitioners are not entitled to be regularised on Group 'D' posts, the respondents are duty bound to consider their cases for grant of temporary status in terms of paragraphs 4 and 8 of the Scheme.

Learned Central Government Standing Counsel supported the order of the

Tribunal and argued that the petitioners are not entitled to be regularised on Group 'D' posts because their initial engagement was by backdoor method. They further argued that the petitioners cannot be conferred temporary status under the Scheme because, as on the date of issue of Office Memorandum (OM), none of them had completed 206 days service in one year.

We have given our most anxious consideration to the respective submissions and scanned the record. In our opinion, the petitioners' claim for regularisation on Group 'D' posts is liable to be negated because they have neither pleaded nor any material has been placed before the Court to show that they were initially engaged by following some procedure consistent with the doctrine of equality enshrined in Articles 14 and 16 of the Constitution. Therefore, their claim for regularisation on Group 'D' posts cannot but be termed as wholly misconceived. In **Secretary, State of Karnataka v. Uma Devi**[1], the Constitution Bench of the Supreme Court referred to a large number of judicial precedents, over-ruled some of the judgments in which directions were given for regularsation of daily wagers, casuals and ad hoc appointees, and laid down several propositions, some of which are extracted below:

1) Persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. Such an argument fails when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution. Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.

2) It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to

bargain—not at arm's length—since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it.

3) When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

4) Orders for absorption, regularisation or permanent continuance of such employees are passed apparently in exercise of the wide powers under Article 226 of the Constitution. The wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over. It is time that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

5) The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such

cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

6) The State should not be allowed to depart from the normal rule and indulge in temporary employment in permanent posts. Regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and appointments to non-available posts should not be taken note of regularisation. The Supreme Court is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shit its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. It is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. The approving of such acts also results in depriving many of their opportunity to compete for public employment. It would also mean that appointments made otherwise than by a regular process of selection would become the order of the day, completely jettisoning the constitutional scheme of appointment."

By applying the above noted propositions to the facts of these cases, we hold that the petitioners are not entitled to be regularised on Group 'D' posts.

The argument of Shri V. Jagapathi and Shri C. Sivasankar that the petitioners are entitled to age relaxation because they were within age limit in July 2000 sounds attractive, but lacks merit. Paragraph 4 of the Scheme, which provides for conferment of temporary status on casual labourers, reads as under:

4. Temporary status:

i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.

iii) Conferment of temporary status on the casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

Paragraph 8 of the Scheme, which contains the procedure for filling up of Group 'D' posts, reads as under:

> **8. Procedure for filling up of Group 'D' posts -**
> Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant Recruitment Rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fall to fulfil the minimum qualification prescribed for the post, regularisation will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer."

A conjoint reading of the above reproduced provisions makes it clear that temporary status can be conferred only on those casual labourers who had, on the date of issue of the Office Memorandum, rendered a continuous service for at least one year and actually remained engaged for 240 days (206 days in the cases of offices observing 5 days week). A glance at the tabular statement extracted in the earlier part of this order shows that none of the petitioners has remained engaged for a period of 206 days in one year preceding the issue of Office Memorandum vide which the Scheme was notified. Therefore, none of them is eligible for grant of temporary status.

The argument of the learned counsel that the petitioners are entitled to age relaxation because they were treated eligible for recruitment pursuant to the advertisement issued in July, 2000 is liable to be rejected because, as mentioned above, none of the petitioners satisfy the condition enumerated in paragraph 4(i) of the Scheme.

No other point has been argued.

In the result, the writ petitions are dismissed.

As a sequel to dismissal of the writ petitions, WPMP Nos. 26161, 27302, 31204, 31416 of 2006 filed by the petitioners for interim reliefs are disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 27, 2007

svs

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[1] (2006) 4 SCC 1